As it is not claimed by any of the parties that there had been any legal adoption proceedings in this country it is necessary to decide what law is applicable, particularly because it is claimed that the adoption was legal according to Chinese law at any rate to the extent of entitling the first wife of the said Soo-Hoo Hong to a share in his estate.

It is to be noted that the property referred to is immovable property. It is common ground that the law prevailing in this country in 1942, the date that Soo-Hoo Hem Leng was presumed to have died, is the relevant law in this case. It is also common ground that the relevant law at that date in Penang was the same as that in England. It is also common ground that the relevant law at that date in Perak was the Federated Malay States Distribution Enactment (Cap. 71).

The law in Penang at that date was that the distribution of immovable property situated in Penang of a deceased intestate was regulated by the law of the *lex situs* and the law of the *lex situs* was that if there were no next-of-kin in such circumstances the Crown was entitled to the whole of the property as *bona vacantia*. By virtue of the various constitutional changes which have taken place since 1942 the Government of the Federation of Malaya has, in so far as the matters with which we are now dealing are concerned, taken the place of the Crown.

Subsection (ii) of section 4 of the Federated Malay States Distribution Enactment (Cap. 71) reads:—

"(ii) The distribution of the immovable property of a person deceased shall be regulated by this Enactment, wherever he may have had his domicile at the time of his death."

Rule No. 10 set out in section 7 of that Enactment provides that if the intestate leaves no next-of-kin, then subject to the rights of the widow or husband, if any, the Government of the Federated Malay States shall be entitled to the whole of the estate. The only question that now arises is what has taken the place of the Government of the Federated Malay States for the purposes of this Rule.

In the Transfer of Powers Ordinance, 1948, section 4 states:—

"4. The existing laws as varied by this Ordinance shall, in their application to any territory comprised in the Federation, be construed, when the context admits, subject to the following modifications —

.....

(b) references to the Federated Malay States shall be construed as references to the States of Negri Sembilan, Pahang, Perak and Selangor;

.....

(i) references to any officer of, or authority or body constituted in or for, the Federated Malay States, any Malay State, the Colony of the Straits Settlements, or the Malayan Union shall be construed as references to the corresponding officer of, or authority or body constituted in or for the Federation, or any Malay State or Settlement, as the case may require, and, for removal of doubt, the High Commissioner in Council may, from time to time, by Order declare who is the corresponding officer of, or authority or body constituted in or for the Federation, Malay State or Settlement as the case may be;

....."

At first glance it would seem to be a reasonable argument that the Government of the Federation of Malaya is the corresponding authority or body to the Government of the Federated Malay States. The important words of paragraph (i) however are, I think, "as the case may require." Reference to the Federated Malay States Land Code (Cap. 138), the land law operative in the State of Perak at all relevant times, shows that it is clearly contemplated in section 30 that if at any time there is no proprietor of any land surviving the entire property in and control of the land shall revert to and vest in the Ruler of the State and all title thereto of any person shall cease and be extinguished. In view of this provision this case in my opinion clearly requires that the reference to the Government of the Federated Malay States in subsection (ii) of section 4 of the Federated Malay States Distribution Enactment (Cap. 71) should be construed as the Government of the State of Perak. My attention has not been drawn to, nor can I find, anything in or arising out of the constitutional changes which took place in 1957 which requires any alteration to or variation of this construction.

In my opinion therefore the immovable property in Penang accrues to the Government of the Federation of Malaya and the immovable property in Perak accrues to the Government of the State of Perak as *bona vacantia*.

Order accordingly.

Solicitors: *Ong Huck Lim & Co.; Hogan, Adams & Allan; Presgrave & Matthews.*

Re SYED AHMED ALSAGOFF, DECD.

[C. A. (Rose C.J., Tan Ah Tah and Buttrose JJ.) December 14, 1962]

[Singapore — Civil Appeal No. 12 of 1962]

Estate Duty — Will — Net income of testator's property to be distributed annually during lifetime of last survivor of beneficiaries according to Muslim law and twenty years after — Whether estate duty to be borne by corpus of testator's estate or by that portion of corpus accruing to successors of deceased income beneficiary or by the general corpus of the estate.

The material provisions of the testator's will, made on December 30, 1868, provided that the net income from the testator's freehold and leasehold property was to be divided annually amongst his wife and children and their descendants according to the shares prescribed by Muslim law. The net income was to be distributed during the life-time of the last survivor of his children and more remote issue living at his death and for twenty years after the death of such survivor. The share of a male child was to be twice that of a female child. After the death of a child, the share payable to the child was to be paid to his or her children, a male child's share being twice that of a female child, and so on from generation to generation. If a descendant of the testator died without children, then his or her share was to devolve upon other descendants of the same degree. At the expiration of the period of twenty years the property was to be sold and the proceeds of sale were to be divided

amongst the several persons then entitled to receive the net income in proportion to their several rights and interests therein according to Muslim law.

The date of distributing of the corpus was May 28, 1961, and estate duty had been paid on the death of each of the income beneficiaries who had died before May 28, 1961.

Upon the trustees taking out a summons for the determination of the question whether estate duty payable on the death prior to May 28, 1961, of an income beneficiary should be borne by that portion of the corpus of the estate accruing to the successors of the deceased income beneficiary or by the general corpus of the estate;

Held: the estate duty paid on the death of each of the income beneficiaries who died before May 28, 1961, should be borne by that portion of the corpus of the testator's estate which passed upon the deaths of the respective income beneficiaries.

Re Northcliffe (3) explained.

Decision of Ambrose J. ([1962] M.L.J. 361) affirmed.

Cases referred to:—

(1) *Earl Cowley* v. *Inland Revenue Commissioners* [1899] A.C. 198.

(2) *Public Trustee* v. *Inland Revenue Commissioners* [1960] A.C. 398.

(3) *Re Northcliffe* [1929] 1 Ch. 327.

(4) *Betts Brown's Trustees* v. *Whately Smith* [1941] S.C. 69.

(5) *Re Syed Hashim bin Kassim, deceased* [1936] M.L.J. 245.

(6) *Re Palmer* [1916] 2 Ch. 391.

COURT OF APPEAL.

C. H. Smith for those interested in contending that estate duty should be borne by the general corpus.

L. A. J. Smith for those interested in contending that estate duty should be borne by that portion of the corpus accruing to the successors of the deceased.

H. M. Dyne for the trustees.

Cur. Adv. Vult.

Tan Ah Tah J.: This appeal concerns the incidence of estate duty paid on the deaths of income beneficiaries of the estate of Syed Ahmed bin Abdulrahman Alsagoff, who made his will on the 30th December, 1868, and died on the 27th March, 1875. The provisions of the testator's will, so far as they are material, may be summarised as follows. The net income from the testator's freehold and leasehold property is to be divided annually amongst his wife and children and their descendants according to the shares prescribed by Mohammedan law. The net income is to be distributed during the lifetime of the last survivor of his children and more remote issue living at his death and for twenty years after the death of such survivor. The share of a male child is to be twice that of a female child. After the death of a child, the share payable to the child is to be paid to his or her children, a male child's share being twice that of a female child, and so on from generation to generation. If a descendant of the testator dies without children, then his or her share is to devolve upon other descendants of the same degree. At the expiration of the period of twenty years the property is to be sold and the proceeds of sale are to be divided amongst the several persons then entitled to receive the net income in proportion to their several rights and interests therein according to Mohammedan law.

It has been established that the date of distribution of the corpus is the 28th May, 1961. Estate duty has been paid on the death of each of the income beneficiaries who died before the 28th May, 1961. In the majority of such cases, the trustees raised the estate duty by charging the share of the corpus passing on the death of the respective income beneficiaries by way of mortgage. The interest payable on all such mortgages and on advances of capital monies which were also made by the trustees of the estate for the purpose of paying the estate duty was deducted from the income to which the successors of the respective deceased income beneficiaries became entitled before any distribution of income was made to such successors.

In the circumstances the trustees took out a summons for the determination of certain questions the principal one of which was whether estate duty payable on the death prior to the 28th May, 1961 of an income beneficiary should be borne by that portion of the corpus of the testator's estate accruing to the successors of the deceased income beneficiary or by the general corpus of the estate. Another question was whether interest charged after the 28th May, 1961 in respect of unpaid estate duty or interest charged after the 28th May, 1961 on mortgages raised for the purpose of paying estate duty arising on the death prior to the 28th May, 1961 of an income beneficiary should be borne by that portion of the corpus of the testator's estate accruing to the successors of the deceased income beneficiary or by the general corpus of the estate. The learned judge in the court below decided that both the estate duty and interest should be borne by that portion of the corpus of the testator's estate which passed upon the deaths of the respective income beneficiaries. It is from this decision that this appeal has been lodged.

In his judgment the learned judge referred to Lord Macnaghten's well-known dictum in *Earl Cowley* v. *Inland Revenue Commissioners* (1) at p. 212 to the effect that sections 1 and 2 of the Finance Act, 1894 are mutually exclusive. Mr. C. H. Smith, who represents the beneficiaries who are interested in contending that the estate duty and interest should be borne by the general corpus of the estate, has pointed out that Lord Macnaghten's dictum was disapproved by the majority of the House of Lords in *Public Trustee* v. *Inland Revenue Commissioners* (2) and that the learned judge was in error in relying on that dictum. It is perfectly true that the dictum has been disapproved but, in my opinion, that fact has no relevance to the questions which have arisen for determination in this particular case.

In support of his argument that the estate duty should be borne by the general corpus of the estate, Mr. Smith relied on the following passage from the judgment of Maugham J. in *Re Northcliffe* (3) at p. 335:

"The result is that the duty in question must, I think, be borne out of the corpus of the estate."

When the whole judgment of Maugham J. is read, it is obvious, as the learned judge in the court below stated, that the words "corpus of the estate" mean "that portion of the residue out of which the income was payable." Support for this view can be found in the following passage from the judgment of Lord Mackay in *Betts Brown's Trustees* v. *Whately Smith* (4) at p. 86:

"*In re Northcliffe* is the only other case calling for any observation. ..... The words of the judge are few, and one is not surprised that they were read in what I think to be an erroneous sense. These words were the last sentence, reading as follows: 'The result is that the duty in question must, I think, be borne out of the corpus of the estate.' In applying that to the present case, the supposition was that the corpus spoken about would be the whole residue or at least the whole residual income. But it is perfectly clear from the context that the reporters in their head-note are right when they give the result in these terms: 'And (2) that the duty payable on any such death was a first charge on that portion of the residue out of which the income was payable, and must be borne by the corpus of such estate.' ..... the word 'such' does not appear in the speech as reported, but it is obvious from the context that that was the judge's real conclusion."

Mr. Smith also relied on the following passage from the judgment of Adrian Clark J. in *Re Syed Hashim bin Kassim, deceased* (5) at p. 247:

"Eventually the cumulative effect of successive payments of estate duty as successive lives fall in will be borne by the residuary beneficiaries."

It is clear from the judgment of Adrian Clark J. in that case that in arriving at his decision he was following *Re Northcliffe, supra.* In making the observation which I have just read, it is probable that he had in mind the passage from the judgment of Maugham J. in *Re Northcliffe, supra,* which I have already cited. If this is correct, then it seems to me, with all respect to Adrian Clark J., that he read that passage in an erroneous sense. In my opinion, Mr. Smith cannot derive any assistance either from the passage from the judgment of Maugham J. in *Re Northcliffe, supra,* or the passage from the judgment of Adrian Clark J. in *Re Syed Hashim bin Kassim, deceased, supra.*

Another case relied on by Mr. Smith was *Re Palmer* (6). The facts of that case are different from those in the present case in that it was a case of an annuity which was chargeable upon the whole residue of the testator's estate and it was the whole residue which derived benefit from the cesser of the annuity. In my opinion, *Re Palmer* provides no assistance in the determination of the questions which have arisen in the present case.

As to the argument put forward by Mr. Smith regarding the testator's intention, I cannot find anything in the language of the will which makes it necessary to interfere with the incidence of estate duty payable upon the deaths of income beneficiaries.

In my judgment the learned judge came to a correct decision in answering the questions as he did. The appeal is accordingly dismissed. The costs of the applicants and of the two solicitors who were appointed to represent the two classes of beneficiaries will be paid out of the testator's estate.

Rose C.J. and **Buttrose J.** concurred.

Appeal dismissed.

Solicitors: *Laycock & Ong; L. A. J. Smith; Donaldson & Burkinshaw.*

BANK OF CHINA v. CHEW KEAN KOR

[A. C. J. (Hepworth J.) December 17, 1962]

[Penang — Civil Suit No. 158 of 1962]

Banking — Collection of interest in principal — Whether amounting to "carrying on banking business" — Banking Ordinance, 1958, s.3.

Practice and Procedure — O.14 — Summary judgment under.

The collection of interest in respect of a sum owing to a bank before its winding up does not amount to transacting a banking business within the provisions of section 3 of the Banking Ordinance, 1958.

Cases referred to:—

(1) *Synn Lee & Co. Ltd.* v. *Bank of China* [1961] M.L.J. 87.
(2) *Bank of China* v. *Lee Kee Pin* [1961] M.L.J. 40.
(3) *Re Farm Security Act, 1944* [1947] S.C.R. 394.
(4) *Watkins* v. *Morgan,* 6 C. & P. 661.
(5) *Hudson* v. *Fossett,* 12 L.J.C.P. 141.
(6) *Florence* v. *Jenings,* 26 L.J.C.P. 274.
(7) *Hamilton* v. *Brogden,* 60 L.J. Ch. 88.

APPEAL from the Senior Assistant Registrar in Chambers.

R. K. Sharma for the appellant.

Khoo Keat Siew for the respondents.

Cur. Adv. Vult.

Hepworth J.: This was an appeal from the decision of the Senior Assistant Registrar giving the plaintiffs/respondents leave to sign final judgment under Order 14.

The plaintiffs/respondents were a company incorporated in China and having a branch office at the Bank of China Building at Battery Road, Singapore. The defendant/appellant was a merchant trading under the name of Seng Hock & Co. The defendant/appellant had an account with the plaintiffs/respondents' Penang branch.

The respondents' claim was for money payable by the appellant to the respondents' Penang branch for money lent by the respondents to the appellant and for money paid by the respondents for the appellant as bankers for the appellant at his request and for interest upon money due from the appellant to the respondents. As at 30th April, 1962, the balance of the banking account amounted to $46,832.58.